



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

Am

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/916,866	07/27/2001	Michael L. Davis	13768.67.16.2	1589

7590 05/19/2005

Workman Nydegger & Seeley
1000 Eagle Gate Tower
60 E. South Temple
Salt Lake City, UT 84111

EXAMINER

SHRADER, LAWRENCE J

ART UNIT	PAPER NUMBER
----------	--------------

2193

DATE MAILED: 05/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/916,866

Applicant(s)

DAVIS ET AL.

Examiner

Lawrence Shrader

Art Unit

2193

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This office action is in response to the amendment filed by the Applicant on 8/18/2004.
2. The arguments have been fully considered, but they are moot in view of the new grounds of rejection. Claims 1 – 34 remain rejected.

Oath/Declaration

3. The new oath/declaration filed on 8/18/2004 is acknowledged and accepted.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1 – 7; 8 – 13; 14 – 21; 22, 23, and 25 – 27 are rejected under 35 U.S.C. 102(e) as being anticipated by art of record Collins, III et al., U.S. Patent 6,286,041 (hereinafter referred to as Collins).

In regard to claim 1:

Collins discloses a data processing system having software for installation comprising:

"a first computer configured to receive the software, the first computer being newly added to the data processing system; and"

Collins discloses a first computer configured to receive software (column 1, lines 40 – 54; e.g., Figure 1). It is disclosed that the server computer automatically determines when to install software on the target (a target computer). If a target computer requires an upgrade the server will upgrade it. This condition is inherent in the computer whether it is new or old since every computer must have software to operate.

"a second computer configured to automatically determine when the first computer is added to the data processing system, the second computer being configured to control the installation of the software onto the first computer when it is determined to install the software onto the first computer and is heterogeneous with respect to the first computer."

Collins discloses a first computer configured to receive software (column 1, lines 40 – 54; column 2, lines 48 – 57). It is disclosed that the server computer automatically determines when to install software on the target (a first computer). If a target computer requires an upgrade the server will upgrade it. This condition is inherent in the computer whether it is new or old since every computer must have software to operate. The Collins patent discloses heterogeneous target computer systems (Abstract and column 8, lines 7 - 23).

In regard to claims 2 - 7, incorporating the rejection of claim 1:

"...wherein the software is a version of a program, and wherein the second computer includes a detection component for detecting when the version of the program is outdated and for installing a new version of the program onto the first computer."

"... wherein the second computer includes a detection component for detecting when a third computer is added to the data processing system and for automatically installing the software onto the third computer in response to the addition of the third computer."

"...wherein the first computer has an associated first natural language and wherein the second computer has an associated natural language."

"... wherein the first computer executes an operating system of a first type and wherein the second computer executes an operating system of a second type."

Collins discloses a system for software distribution in a system with a heterogeneous set of computers having different hardware and software configurations. The limitations of claims 2 – 7 are inherent or at least implied in the disclosed system having the criteria-dependent feature disclosed at column 8, lines 7 – 23.

In regard to claim 8:

"a first computer having an associated natural language and a processor running an operating system, the first computer being newly added to the data processing system;"

Collins discloses a first computer configured to receive software (column 1, lines 40 – 54; e.g., Figure 1). It is disclosed that the server computer automatically determines when to install software on the target (a target computer). If a target computer requires an upgrade the server will upgrade it. This condition is inherent in the computer whether it is new or old since every computer must have software to operate.

"a second computer, heterogeneous with respect to the first computer, having a first component configured to store editions of software, a second component configured to automatically determine the natural language associated with the first computer, the operating system running on the first computer and the type of processor in the first computer and a third component configured to control installation of one edition of the software onto the first computer that is particular to the type of processor in the first computer, the operating system running on the first computer and the natural language

associated with the first computer, wherein the second computer installs the edition of the software by utilizing commands that are suitable for the operating system running on the first computer."

Collins discloses a first computer configured to receive software (column 1, lines 40 – 54; column 2, lines 48 – 57). It is disclosed that the server computer automatically determines when to install software on the target (a first computer). If a target computer requires an upgrade the server will upgrade it. This condition is inherent in the computer whether it is new or old since every computer must have software to operate. The Collins patent discloses heterogeneous target computer systems (Abstract and column 8, lines 7 - 23).

In regard to claim 9, incorporating the rejection of claim 8:

"...wherein the second computer is configured to start the software."

See column 2, lines 48 – 57.

In regard to claim 10, incorporating the rejection of claim 8:

"...wherein the first computer is associated with a first site and the second computer is associated with a second site."

See Figure 1.

In regard to claim 11, incorporating the rejection of claim 10:

"...wherein the second computer manages the second site."

See column 1, lines 40 – 54.

In regard to claim 12, incorporating the rejection of claim 8:

"...wherein the second computer comprises a helper server, the helper server being configured to install the software on the first computer."

See column 5, lines 21 – 34.

Art Unit: 2193

In regard to claim 13, incorporating the rejection of claim 8:

"...wherein the second computer comprises a detection component configured to detect the first computer."

When the first computer logs on to the second computer, the second computer detects the first computer (column 2, lines 48 – 57).

In regard to claim 14:

"a first computer configured to receive one or more application programs, the first computer forming part of a first site comprising a plurality of computers connected together by a first area network;"

See Collins Figures 1 – 3.

"a second computer associated with a second site comprising a plurality of computers connected together by a second area network, the second computer being configured to store the one or more application programs and manage the delivery of the one or more software to the first computer by automatically determining when the first computer is added to the data processing system and controlling the installation of the software onto the first computer when it is determined by the second computer to install the software onto the first computer."

See Collins Figures 1 – 3 for networking functionality. Collins discloses a first computer configured to receive software (column 1, lines 40 – 54; column 2, lines 48 – 57). It is disclosed that the server computer automatically determines when to install software on the target (a first computer). If a target computer requires an upgrade the server will upgrade it if it is electrically connected to the network (column 2, lines 17 – 20). The Collins patent discloses heterogeneous target computer systems (Abstract and column 8, lines 7 - 23).

In regard to claim 15, incorporating the rejection of claim 14:

"...wherein the second computer is configured to start the software."

See column 2, lines 48 – 57.

In regard to claim 16, incorporating the rejection of claim 14:

"... wherein the second computer comprises a helper server, the helper server being configured to install the software on the first computer."

See column 5, lines 21 – 34.

In regard to claim 17, incorporating the rejection of claim 14:

"...wherein the second computer comprises a detection component configured to detect the first computer."

When the first computer logs on to the second computer, the second computer detects the first computer (column 2, lines 48 – 57).

In regard to claim 18 – 21, incorporating the rejection of claim 14:

"...wherein the first computer has an associated first natural language and wherein the second computer has an associated natural language."

"...wherein the first computer executes an operating, system of a first type and wherein the second computer executes all operating system of a second type."

"...wherein the first computer has a processor of a first type and wherein the second computer has a processor of a second type."

"... wherein the first computer executes a network operating system of a first type and wherein the second computer executes a network operating system of a second type."

Collins discloses a system for software distribution in a system with a heterogeneous set of computers having different hardware and software configurations. The limitations of claims 2 – 7 are inherent or at least implied in the disclosed system having the criteria-dependent feature disclosed at column 8, lines 7 – 23.

In regard to claim 22:

"automatically determining when a first computer is added to the data processing system, the first computer comprising a natural language and a processor running an operating system;"

"identifying a stored edition of software, at a second computer, that is particular to the natural language, the processor, and the functioning operating system of the first computer;"

See Collins Figures 1 – 3 for networking functionality. Collins discloses a first computer configured to receive software (column 1, lines 40 – 54; column 2, lines 48 – 57). It is disclosed that the server computer automatically determines when to install software on the target (a first computer). If a target computer requires an upgrade the server will upgrade it if it is electrically connected to the network (column 2, lines 17 – 20). Collins discloses a system for software distribution in a system with a heterogeneous set of computers having different hardware and software configurations (Abstract and column 8, lines 7 – 23). The limitations of claims 2 – 7 are inherent or at least implied in the disclosed system having the criteria-dependent feature disclosed at column 8, lines 7 – 23.

"identifying stored preferences controlling installing the stored edition of the software onto the first computer; and"

"automatically installing only the edition of the software onto the first computer, directly from the second computer, utilizing commands that are suitable for the functioning operating system running on the first computer and based upon the stored preferences."

See Collins Figure 7 and column 8, lines 7 – 23 concerning criteria values.

In regard to claims 23 and 24, incorporating the rejection of claim 22:

"...further comprising, automatically starting, by the second computer, the installed edition of the software on the first computer."

"...further comprising delivering the edition of the software to a third computer, the third computer installing only the edition of the software onto the first computer directly from the third computer utilizing commands that are suitable for the operating system running on the first computer and based upon the stored preferences."

See column 2, lines 48 – 57 for automatically starting; and Figure 7 and column 8, lines 7 – 23 concerning criteria values to determine code suitable for a particular configuration.

In regard to claim 25, incorporating the rejection of claim 22:

"...wherein determining when the first computer is added to the data processing system occurs periodically."

Scheduling is disclosed at column 2, lines 48 – 57; column 5, lines 24 – 27.

In regard to claim 26, incorporating the rejection of claim 22:

"...wherein determining, when the first computer is added to the data processing system occurs in accordance with a predetermined amount of time set by an administrator of the data processing system."

Scheduling is disclosed at column 2, lines 48 – 57; column 5, lines 24 – 27.

In regard to claim 27, incorporating the rejection of claim 22:

"...wherein determining when the first computer is added to the data processing system occurs in accordance with an instruction of an administrator."

The scheduling algorithm inherently involves an act or an instruction of an administrator.

In regard to claim 28:

"a step for determining, remote from the first computer, when the first computer is added to the data processing system, the first computer comprising a natural language and a processor running a functioning operating system; "

"a step for receiving at the first computer an edition of software that is particular to the natural language, the processor, and the operating system of the first computer; "

"a step for automatically installing onto the first computer only the edition of the software, under the control of a second computer, utilizing commands that are suitable for the operating system running on the first computer."

Collins discloses a first computer configured to receive software (column 1, lines 40 – 54; column 2, lines 48 – 57). It is disclosed that the server computer automatically determines when to install software. If a target computer requires an upgrade the server will upgrade it. This condition is inherent in the computer whether it is new or old since every computer must have software to operate. The Collins patent discloses heterogeneous target computer systems (Abstract and column 8, lines 7 - 23).

Claim 29 (a computer program product): it is rejected for the same reasons put forth in the rejection of claim 22 (a corresponding DP system).

Claim 30 (a computer program product) incorporating the rejection of claim 29: it is rejected for the same reasons put forth in the rejection of claim 23 (a corresponding DP system).

Claim 31 (a computer program product) incorporating the rejection of claim 29: it is rejected for the same reasons put forth in the rejection of claim 24 (a corresponding DP system).

Claim 32 (a computer program product) incorporating the rejection of claim 29: it is rejected for the same reasons put forth in the rejection of claim 25 (a corresponding DP system).

Art Unit: 2193

Claim 33 (a computer program product) incorporating the rejection of claim 29: it is rejected for the same reasons put forth in the rejection of claim 26 (a corresponding DP system).

Claim 34 (a computer program product) incorporating the rejection of claim 29: it is rejected for the same reasons put forth in the rejection of claim 27 (a corresponding DP system).

Conclusion


6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lawrence Shrader whose telephone number is (703) 305-8046. The examiner can normally be reached on M-F 08:00-16:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kakali Chaki can be reached on (703) 305-9662. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Lawrence Shrader
Examiner
Art Unit 2124

13 May 2005



TODD INGBERG
PRIMARY EXAMINER